

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 03-E-0106

In the Matter of the Liquidation of  
The Home Insurance Company

**OBJECTIONS AND RESPONSE OF THE  
ACE COMPANIES TO THE LIQUIDATOR'S MOTION FOR  
APPROVAL OF AGREEMENT AND COMPROMISE WITH AFIA CEDENTS**

Century Indemnity Company ("Century"), ACE Property and Casualty Insurance Company ("ACE P&C"), Pacific Employers Insurance Company ("PEIC") and ACE American Reinsurance Company ("AARe") (collectively the "ACE Companies") hereby submit their Objections and Response to the Liquidator's Motion for Approval of Agreement and Compromise with AFIA Cedents (the "Motion"), as more fully set forth in the accompanying Memorandum and Affidavits of Michael Durkin ("Durkin Affidavit") and Richard Hacker, Q.C. ("Hacker Affidavit").

**I. Interest of the ACE Companies**

1. The ACE Companies, each of which is incorporated in Pennsylvania, are creditors of Home Insurance Company in Liquidation ("Home") and will be submitting proofs of claims for current and future liabilities owed by Home under various reinsurance contracts. (Durkin Aff. ¶ 4) In total, the claims by the ACE Companies against Home exceed \$13 million. (Durkin Aff. ¶ 5)

2. Century is also a reinsurer of Home. Pursuant to the Insurance and Reinsurance Assumption Agreement dated January 31, 1984 (the "Assumption Agreement") referenced in ¶ 3 of the Motion, Century has assumed Home's liabilities on contracts of reinsurance that Home

issued to various insurance companies through its U.K. branch office (the "AFIA Cedents").<sup>1</sup> (Durkin Aff. ¶¶ 6-10) The Assumption Agreement also vested Century with corresponding obligations and rights to investigate, adjust, and settle claims by AFIA Cedents against Home. (Durkin Aff. Ex. A ¶ 3) The Assumption Agreement is governed by New York law, and disputes between Home and Century must be resolved by arbitration in New York. (*Id.* ¶ 7, 10)

## **II. The Liquidator's Proposed Agreement Violates the Order of Distribution Scheme in the New Hampshire Insurers Rehabilitation and Liquidation Act**

3. Section 402-C:44 of the New Hampshire Insurers Rehabilitation and Liquidation Act (the "Act") provides that:

The order of distribution of claims from the insurer's estate shall be as stated in this section. . . .[E]very claim in each class shall be paid in full or adequate funds retained for the payment before the members or the next class receive any payment. No subclasses shall be established within any class.

N.H. REV. STAT. ANN. § 402-C:44 (emphasis added). Section 402-C:44 defines the relevant classes as follows: Class I - expenses of administering the liquidation; Class II - policyholder claims; Class III - federal government claims; Class IV - wages; and Class V - a "residual classification," which includes unsecured creditors under reinsurance agreements such as the ACE Companies. (*Id.*)

4. Like the ACE Companies, the AFIA Cedents also are reinsurance creditors of Home and thus are Class V creditors. The Liquidator's proposed agreement with the AFIA Cedents (the "Agreement") at issue in the Motion guarantees the AFIA Cedents a distribution equal to 50 percent of the reinsurance recoveries attributable to their proofs of claim (less expenses of collection), an amount the Liquidator estimates at \$50 million (Motion ¶ 14).

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<sup>1</sup> The Assumption Agreement is between Home and Insurance Company of North America ("INA"). As explained more fully in the ACE Companies' Memorandum, Century is the successor to INA with respect to the Assumption Agreement by virtue of a corporate restructuring under Pennsylvania law. Century subsequently was acquired by the ACE Group in 1999.

However, the Liquidator acknowledges that creditors in classes above Class V are unlikely to receive payment of their claims in full and indeed that other Class V creditors are unlikely to receive any distribution from the Home estate. (Motion ¶ 6) Therefore, if approved, the Agreement would violate the mandatory provisions of § 402-C:44 by elevating the claims of a small group of Class V creditors (the AFIA Cedents) over the higher classes of creditors whose claims will not be paid in full (according to the Liquidator's Motion). Moreover, in direct contravention of § 402-C:44, the Liquidator's proposal creates a subclass of Class V (the AFIA Cedents) creditors who will receive preferential treatment over other Class V creditors such as the ACE Companies.

5. The Liquidator's proposal also violates ¶ (w) of the Court's Order of Liquidation dated June 13, 2003, which directs the Liquidator to administer the claims of residents of foreign countries in accordance with New Hampshire's priority statute.

### **III. The Liquidator's Proposal Violates the Provisions of § 402-C:61 Relating to Ancillary Receiverships in Foreign Countries**

6. Section 402-C:61 of the Act provides:

If an ancillary receiver in another state or foreign country, whether called by that name or not, fails to transfer to the domiciliary liquidator in [New Hampshire] any assets within his [or her] control other than special deposits, diminished only by the expenses of the ancillary receivership, if any, the claims filed in the ancillary receivership, other than special deposit claims or secured claims, shall be placed in the class of claims under § 402-C:44, VIII.

N.H. REV. STAT. ANN. § 402-C:61 (emphasis added). The Liquidator's proposal violates this section because it would allow an ancillary foreign receiver to distribute assets other than "special deposits" to certain Class V creditors rather than relinquishing control of such assets to the Liquidator for distribution pursuant to the priority scheme in the Act, § 402-C:44.

#### **IV. The Liquidator's Efforts to Justify His Violation of the Act are Meritless**

##### **A. The Liquidator Has No Authority to Violate the Act on the Basis of an Alleged "Compromise"**

7. The Liquidator attempts to justify his violation of § 402-C:44 by characterizing the Agreement as a "compromise" of an alleged dispute with the AFIA Cedents with regard to their rights to "wall off" Home's "U.K. assets." The provisions of § 402-C:44, however, are mandatory. The order of distribution statute was established by the New Hampshire legislature and embodies clear policy judgments that neither the Court nor the Liquidator has discretion to compromise, negotiate, ignore or override. The case law leaves no question that the Liquidator lacks authority to "compromise" this core aspect of the governing liquidation statute.

##### **B. There Is No Credible "Threat" or "Dispute" Purportedly Justifying the Liquidator's "Compromise"**

8. The core of the Liquidator's argument is that some (unidentified) AFIA Cedents allegedly have threatened to petition the U.K. courts to establish a separate U.K. liquidation for Home pursuant to which any existing "U.K. Assets" of Home would be "walled off" and distributed exclusively to the U.K. creditors of Home. Although the Liquidator states that this threat lacks "any legal merit," he nonetheless asserts that the purported dispute must be "compromised" to avoid "complex, protracted and costly litigation." (Motion ¶¶ 7-8)

9. As established in the Hacker Affidavit, the Liquidator's claimed concern over complex or protracted litigation arising out of an effort by some AFIA Cedents to "wall off" English assets for their exclusive benefit is wholly unfounded. Such an action would fly in the face of well established case law prohibiting such a proposal, and would be summarily dismissed by an English Court, with the Liquidator entitled to reimbursement of most of its fees and costs. (Hacker Aff. ¶¶ 42-44.) The alleged dispute that justifies the Liquidator's motion is thus illusory and merely a pretext for seeking to circumvent the priority scheme in the Act.

10. Moreover, the Liquidator's "concerns" are founded on the false proposition that the proceeds from recoveries against Century pursuant to the Assumption Agreement constitute "U.K. Assets." To the contrary, by any definition, such recoveries are U.S. assets given that they are claims to be asserted by the Liquidator against a U.S. insurer under a contract governed by New York law with New York arbitration provisions.

**C. The Liquidator's Attempt to Justify His Unlawful "Incentives" to AFIA Cedents Does Not Withstand Scrutiny**

11. The Liquidator argues that it is permissible to give the AFIA Cedents a \$50 million "incentive" to file and pursue proofs of claims because they otherwise might not do so (and if they do not file, the Liquidator has no right to submit a reinsurance claim to Century). The Liquidator cannot justify the unlawful "incentive" to certain Class V creditors and ignore the priorities established in § 402-C:44 merely because doing so theoretically might bring additional assets into the estate. Otherwise, any action that might lead to the collection of funds by the Liquidator, no matter how contrary to the statute, would be allowable because the "end justifies the means."

12. The Liquidator's professed concern that the AFIA Cedents will not file proofs of claim absent the Liquidator's proposed "incentive" need not be taken at face value. Class V creditors generally do not simply abandon potential recoveries in a liquidation, particularly where a claim is sizable, even when the prospects of a satisfactory distribution may be limited. Rather, creditors under reinsurance agreements typically file proofs of claims in liquidation proceedings as a matter of routine practice. Class V creditors who are reinsured by an insolvent company frequently file proofs of claim to protect offset rights they might have as a reinsurer of the company in liquidation (which is a very common occurrence). The fact that not all AFIA Cedents have submitted filings to date is meaningless -- proofs of claim are not even due until June 2004.



13. The Liquidator likewise cannot justify the proposal by his suggestion that certain AFIA Cedents might seek “side agreements” with Century to receive payment directly from Century outside of the liquidation. (Motion ¶ 7.) The Liquidator has provided no evidence of any such “side agreements,” and the question of whether such agreements would be permissible is not before the Court. The mere theoretical possibility of a future dispute over that question cannot justify a wholesale violation of the priority scheme in the Act.

**D. The Liquidator Cannot Pass Off His Improper Distribution Scheme as an Administrative Cost of the Estate**

14. The Liquidator suggests that the \$50 million “incentive” to be paid to the AFIA Cedents can be justified as “a cost of obtaining and collecting an asset of the Home estate.” (Motion ¶ 21.) This remarkable suggestion has no support in the definition of “administrative expenses” contained in § 402C:44(I) and is wholly without basis in law.

**V. The Liquidator’s Proposal Violates Well Established Principles Governing Cross Border Insolvencies and Ancillary Proceedings**

15. The Liquidator’s proposal is entirely unprecedented. If approved, it would violate the well-established principles of cross border ancillary receiverships that have developed in both the U.S. and the U.K. The Court should not sanction a wholesale abandonment of those principles, particularly where the proposal violates New Hampshire law.

**VI. The Liquidator’s Motion is Procedurally Defective, and Its Approval Would Violate the Fifth and Fourteenth Amendments to the United States Constitution and Part I, Article XV of the New Hampshire Constitution**

16. The Liquidator has provided grossly inadequate notice of his Motion. Despite the fact that the Liquidator’s \$50 million proposal affects the interests of all creditors of Home, the Liquidator has provided notice only to five parties or groups of parties. (Notice of Motion) Due process requires actual notice to the affected parties in such circumstances.

17. Due process requires a meaningful hearing and right to be heard on the Liquidator' Motion. Given that the Motion rests on numerous factual assertions, Century is entitled to reasonable discovery and an evidentiary hearing before the Motion can fairly be determined.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned certifies that he served a copy of the foregoing on the following counsel via electronic mail and overnight mail on March 19, 2004.

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## EXHIBIT A

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 03-E-0106

In the Matter of the Liquidation of  
The Home Insurance Company

RESPONDENTS ACE COMPANIES' FIRST SET OF  
INTERROGATORIES TO LIQUIDATOR

Respondents Century Indemnity Company, ACE Property and Casualty Insurance Company, Pacific Employers Insurance Company, and ACE American Reinsurance Company (collectively, the "ACE Companies") hereby request, pursuant to Rule 36 of the Rules of the Superior Court of the State of New Hampshire, that Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, as Liquidator of The Home Insurance Company ("Home"), answer, within thirty (30) days after service or within any other period ordered by the Court, the interrogatories set forth below in accordance with the following definitions and instructions.

Definitions

A. "Identify" shall mean:

(1) As to an individual, providing his or her: (i) full and customarily used name; (ii) present or last known residence and business address and telephone number; and (iii) business, profession(s), office(s), title(s), and/or position(s) held during the relevant time period.

(2) As to any entity other than an individual, providing: (i) its legal name and any other names used by it; (ii) the form or manner of its organization (e.g., partnership, corporation); (iii) the state or country of its incorporation (if it is incorporated); and (iv) the address and telephone number of its principal place of business.

(3) As to a document, providing: (i) the type of document (e.g., letter, memorandum); (ii) its general subject matter; (iii) the date of its creation, execution, and receipt; (iv) the purpose for which the document was made, prepared, signed, delivered, or taken; (v) its author(s), signatory(ies), addressee(s), and recipient(s); (vi) the name and present or last known residence or business address and telephone number of each person who has custody of or knowledge of the whereabouts of the original and/or copies of the document; and (vii) the description of the document in sufficient detail to enable it to be specifically identified and to be the subject of a request to produce. If any document, the identification of which is sought, has been lost or destroyed, state in addition to the information required above whether such document was (a) lost or (b) destroyed, and if lost, state the circumstances under which such document was lost, and if destroyed, identify each person responsible for or participating in such document's destruction.

(4) As to an event, transaction, representation, conversation, occurrence, or presentation, providing: (i) its date; (ii) the location where it took place and the manner of its occurrence (e.g., face-to-face meeting of participants, telephone calls); (iii) the identification of all its participants and eyewitnesses to its occurrence; (iv) its purpose and subject matter; and (v) a complete description of the substance of the event, transaction, representation, conversation, occurrence, or presentation.

(5) As to a thing or an object, providing: (i) a complete description of the thing or object; (ii) the identification of who owns, controls, or possesses the thing or object; and (iii) the location of the thing or object.

B. "Communications" shall mean the transmittal of information in the form of facts, ideas, inquiries or otherwise.

C. The terms "concerning," "relating to," "refer to," "containing" and "regarding" are used in their broadest sense and shall include in their meaning each such terms as well as constituting, embodying, comprising, stating, dealing with, summarizing, recording, noting, mentioning, studying, setting forth, discussing, evaluating, commenting on, responding to, describing, analyzing, containing information concerning, and containing information that is in any way pertinent to the subject matter, directly or indirectly.

D. The term "document" or "documents" is used in the broadest possible sense and shall mean, without limitation, any written, typed, printed, recorded, computer-stored, visual or graphic material, however produced, reproduced, copied or stored (including, but not limited to, any audio tapes, video tapes or magnetic recording tapes, microfilm, microfiche, computer hard drives, recording discs, computer disks or any other computer storage mechanisms whether temporary or permanent, or computer back-up storage media and/or mechanisms), of any type or description, whether in draft or final form, and each non-identical copy or otherwise, regardless of origin or location, in your actual or constructive possession, custody or control, and includes, without limitation, all electronic data (as the term is defined herein), correspondence, communications, records, notebooks, plans, minutes, agendas, lists, summaries, expressions, statements, opinions, instruments, accounts, invoices, ledgers, logs, accounting records, worksheets, estimating sheets, computation sheets, forms, tables, charts, analyses, graphs, forecasts, statistical statements, photographs, slides, recordings, schedules, reports, memoranda, lists, outlines, instructions, notes, calendars, diaries, telexes, telegrams, facsimile transmissions, electronic mail (e-mail), instant computer messaging, voice mail messages and other messages

(including, but not limited to, reports, summaries or other records of telephone conversations and conferences), studies, books, periodicals, magazines, booklets, circulars, brochures, pamphlets, press releases, bulletins (including, but not limited to, inter- and intra-office communications), questionnaires, contracts, agreements, reports and/or summaries of investigations, reports and/or summaries of interviews, expressions or statements of policy, records, reports or summaries of negotiations, agendas for meetings or conferences, minutes or records of meetings or conferences, lists of persons attending any meetings or conferences, opinions or reports of consultants, and drafts and revisions of drafts of any documents, and all other instruments conveying information by written, pictorial, mechanical, electronic or other means. If a document has been prepared in several copies, or additional copies have been made, or copies are not identical (or, because of subsequent modifications or addition of notations or other marginalia, are no longer identical), each non-identical copy is a separate document. The term "document" also includes and refers to the file or any container holding, or which once held, any documents and any writing or printing which might appear on such file or container.

E. "You" or "Liquidator" shall mean Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, as Liquidator of Home, and his predecessors, successors, assigns, employees, agents, accountants, attorneys and any other persons acting or purporting to act on his behalf, including, but not limited to, the Special Deputy Liquidator.

F. "Liquidation" shall mean the liquidation of Home, which was commenced by the filing of a petition to liquidate on or about May 8, 2003.

G. "Motion" shall mean the Liquidator's Motion for Approval of Agreement and Compromise with AFIA Cedents filed in the Liquidation on or about February 11, 2004.



H. "Home UK Branch" shall mean Home's unincorporated branch operation in the United Kingdom.

I. "TNA Agreement" shall mean the Insurance and Reinsurance Assumption Agreement, dated January 31, 1984, which is referred to in paragraph 3 of the Motion.

J. "Agreement" shall mean the Agreement with the AFIA Cedents that is the subject of the Motion.

K. "UK scheme of arrangement" shall mean the proposed scheme of arrangement referred to in paragraphs 12 through 17 of the Motion.

L. "AFIA" shall mean the American Foreign Insurance Association, an unincorporated association of American insurers, through which the Home UK Branch wrote insurance and reinsurance business in the United Kingdom.

M. "AFIA Cedents" shall mean those insurers who ceded insurance risk to Home through the Home UK Branch.

N. "AFIA Treaties" shall mean those reinsurance treaties through which certain insurers ceded insurance risk to Home through the Home UK Branch.

O. "Bengelsdorf" or "Special Deputy Liquidator" shall mean Peter A. Bengelsdorf, as Special Deputy Liquidator of Home, and his predecessors, successors, assigns, employees, agents, accountants, attorneys and any other persons acting or purporting to act on his behalf.

P. "Joint Provisional Liquidators" shall mean the Joint Provisional Liquidators appointed by the High Court of Justice in London, on or about May 8, 2003, in the English provisional liquidation proceeding for the Home UK Branch.

Q. "Informal Creditors' Committee" or "Committee" shall mean the committee of certain AFIA Cedents, which is described in paragraph 8 of the Motion.



R. The terms "all" and "each" shall be construed as all and each.

S. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the requests below all responses that might otherwise be construed to be outside of its scope.

T. The use of the singular form of any word includes the plural and vice versa.

### **Instructions**

A. In answering these interrogatories, furnish all information that is known or available to you regardless of whether this information is possessed directly by you or your agents, employees, representatives, accountants or other persons acting or appearing to act on your behalf and, unless privileged, by your attorneys.

B. Each interrogatory listed below shall be continuing in nature and shall be modified or supplemented to include any additional information, knowledge or data that is later discovered by you or your agents. If you do not have all the information that you need to make a complete response to an interrogatory, provide all of the information that you do have, state that your information is incomplete, identify the information you would need to make a complete response, and provide a supplemental response when you obtain more information.

C. Each interrogatory, including all subparts, must be answered separately, fully, completely, and under oath. If you do not respond to part of an interrogatory as objectionable, respond to the remaining parts of the interrogatory to which you do not object. If you object to any interrogatory, you must note your objection and state the reason therefore.

D. With respect to each interrogatory, identify all documents that were used or referred to in any manner in drafting or preparing the answer and identify all persons who participated or were consulted in any regard in the drafting or preparation of the answer.

E. Where information is not produced on the grounds that it would reveal a privileged communication, you shall provide:

(1) For documents: (i) the type of document; (ii) the general subject matter of the document; (iii) the date of the document; and (iv) such other information as is sufficient to identify the document including, where appropriate, the author of the document, the addressees of the document, any other recipients of the document, and, where not apparent, the relationship of the author, addressees, and recipients to each other.

(2) For communications: (i) the name of the person making the communication and the names of the persons present while the communication was made and, where not apparent, the relationship of the persons present to the person making the communication; (ii) the date and place of the communication; and (iii) the general subject matter of the communication.

F. You must return the original and one copy of your answers to these interrogatories within thirty (30) days of the date of service (or within any other period ordered by the Court) to Respondents' counsel. If you fail to return your answers within thirty (30) days (or within any other period ordered by the Court), Respondents may inform the court, and the court shall make such orders as justice requires, including the entry of a conditional default against you.

### **Interrogatories**

1. Identify and describe in detail the basis for your contention on page 1 of the Motion that entering into the Agreement will "avoid costly, uncertain and protracted multi-jurisdictional litigation." In particular, identify and describe in detail the "litigation" that you contend will be avoided as a result of the Agreement.

2. Identify and describe in detail: (a) the "significant assets related to the Home UK Branch" that you refer to in Paragraph 1 of the Motion; (b) the "assets located in the United Kingdom," the "UK assets," and the "significant assets" that you refer to in paragraph 7 of the Motion; and (c) "Home's UK assets" and "Home's assets in England and Wales" that you refer to in paragraph 11 of the Motion.

3. Identify and describe in detail the basis for your contention in Paragraph 7 of the Motion that "changes to the pre-liquidation arrangements have created disputes and uncertainty over the filing, handling and payment of AFIA Cedents' claims and payment of amounts under the INA Agreement."

4. Identify and describe in detail the basis for your contention in Paragraph 7 of the Motion that "certain of the AFIA Cedents have been exploring alternative means of realizing recovery with respect to the business protected by the AFIA Treaties, including possible circumvention of Home by entering into side arrangements with ACE Group." Also, identify the particular AFIA Cedents at issue.

5. Identify and describe in detail the basis for your contention in Paragraph 7 of the Motion that "[c]ertain AFIA Cedents have also questioned the application of the New Hampshire claims and distribution procedures to claims and assets located in the United Kingdom." Also, identify the particular AFIA Cedents at issue.

6. Identify and describe in detail the basis for your contention in Paragraph 7 of the Motion that "certain AFIA Cedents have previously suggested that UK assets arguably should be 'walled off' from United States creditors and distributed only to Home UK Branch creditors;" and identify any "presentations and further documentation" or any other information presented to AFIA Cedents by the Liquidator and Joint Provisional Liquidators (or anyone else) regarding the

"walling off" approach. In particular, identify all AFIA Cedents who have raised the "walling off" issue and when they did so.

7. Identify and describe in detail the basis for your contention in paragraph 7 of the Motion that there is "the prospect of costly and time-consuming litigation over whether there should be separate US and UK liquidations or a global New Hampshire proceeding."

8. Describe in detail the basis for the distribution of 50% of the "net 'Proceeds'" and other amounts referred to in paragraph 14 of the Motion and described as "Net Recoveries."

9. Describe in detail the basis for your contention in paragraph 14 of the Motion that "the Net Recoveries payable to the AFIA Cedents and the net amounts paid to Home are each estimated to be in excess of \$50 million."

10. Identify and describe in detail the basis for your contention in Paragraph 21 of the Motion that "it is appropriate to agree that the AFIA Cedents may receive a portion of the net proceeds" because it "is in essence a cost of obtaining and collecting an asset of the Home estate for the benefit of the policyholders and other creditors of Home."

11. Identify any person with knowledge relevant to Interrogatories numbers 1 and 3 through 9.

Dated: March \_\_\_\_\_, 2004

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**EXHIBIT B**

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 03-E-0106

In the Matter of the Liquidation of  
The Home Insurance Company

**RESPONDENTS ACE COMPANIES' FIRST REQUEST FOR  
PRODUCTION OF DOCUMENTS BY LIQUIDATOR**

Respondents Century Indemnity Company, ACE Property and Casualty Insurance Company, Pacific Employers Insurance Company, and ACE American Reinsurance Company (collectively, the "ACE Companies") hereby request, pursuant to Rule 35 of the Rules of the Superior Court of the State of New Hampshire, that Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, as Liquidator of The Home Insurance Company ("Home"), produce and permit them to inspect and copy, within thirty (30) days after the service of this request, or within any other period ordered by the Court, the documents listed below in accordance with the following definitions and instructions.

**Definitions**

A. "Communications" shall mean the transmittal of information in the form of facts, ideas, inquiries or otherwise.

B. The terms "concerning," "relating to," "refer to," "containing" and "regarding" are used in their broadest sense and shall include in their meaning each such terms as well as constituting, embodying, comprising, stating, dealing with, summarizing, recording, noting, mentioning, studying, setting forth, discussing, evaluating, commenting on, responding to, describing, analyzing, containing information concerning, and containing information that is in

any way pertinent to the subject matter, directly or indirectly, including, but not limited to, documents concerning the presentation of other documents.

C. The term "document" or "documents" is used in the broadest possible sense and shall mean, without limitation, any written, typed, printed, recorded, computer-stored, visual or graphic material, however produced, reproduced, copied or stored (including, but not limited to, any audio tapes, video tapes or magnetic recording tapes, microfilm, microfiche, computer hard drives, recording discs, computer disks or any other computer storage mechanisms whether temporary or permanent, or computer back-up storage media and/or mechanisms), of any type or description, whether in draft or final form, and each non-identical copy or otherwise, regardless of origin or location, in your actual or constructive possession, custody or control, and includes, without limitation, all electronic data (as the term is defined herein), correspondence, communications, records, notebooks, plans, minutes, agendas, lists, summaries, expressions, statements, opinions, instruments, accounts, invoices, ledgers, logs, accounting records, worksheets, estimating sheets, computation sheets, forms, tables, charts, analyses, graphs, forecasts, statistical statements, photographs, slides, recordings, schedules, reports, memoranda, lists, outlines, instructions, notes, calendars, diaries, telexes, telegrams, facsimile transmissions, electronic mail (e-mail), instant computer messaging, voice mail messages and other messages (including, but not limited to, reports, summaries or other records of telephone conversations and conferences), studies, books, periodicals, magazines, booklets, circulars, brochures, pamphlets, press releases, bulletins (including, but not limited to, inter- and intra-office communications), questionnaires, contracts, agreements, reports and/or summaries of investigations, reports and/or summaries of interviews, expressions or statements of policy, records, reports or summaries of negotiations, agendas for meetings or conferences, minutes or records of meetings or

conferences, lists of persons attending any meetings or conferences, opinions or reports of consultants, and drafts and revisions of drafts of any documents, and all other instruments conveying information by written, pictorial, mechanical, electronic or other means. If a document has been prepared in several copies, or additional copies have been made, or copies are not identical (or, because of subsequent modifications or addition of notations or other marginalia, are no longer identical), each non-identical copy is a separate document. The term "document" also includes and refers to the file or any container holding, or which once held, any documents and any writing or printing which might appear on such file or container.

D. "Computer" shall mean microchips, microcomputers (commonly referred to as "personal computer" or "PCs"), laptop computers, notebook computers, portable computers, palmtop computers (commonly referred to as "personal digital assistants" or "PDAs"), minicomputers and mainframe computers.

E. "Electronic data" shall mean the electronic original (which includes the raw data, the code necessary to make use of that data, and all header, footer and other machine-readable information related to the electronic original), the identical duplicate when the electronic original is not available, and any non-identical copies (whether non-identical because of attached comments, hidden text, annotations, marks, transmission information or alteration of any kind) of information of any kind stored in electronic, magnetic, optical, magneto-optical, or digital form. Electronic data includes, but is not limited to, electronic originals and all copies of electronic mail (e-mail), activity listings and/or logs of electronic mail receipts and/or transmittals, voicemail, audio or video recordings of any kind, output resulting from the use of any software product, including word processing documents, spreadsheets, database files, charts, graphs and outlines, PDF files, batch files, ASCII files, script files, and all miscellaneous electronic files

and/or file fragments, regardless of the media on which they are stored and regardless of whether the data resides in an active file, archival file, deleted file or file fragment, as those terms are defined herein. Electronic data includes any and all information stored on electronic media as that term is defined herein.

F. "Electronic media" shall mean any magnetic or other media used for the storage of electronic data as the term is defined herein. Electronic media includes, but is not limited to, hard disks, floppy disks, CD-ROM disks, Bernoulli disks and their equivalents, Zip disks, Click disks, Memory Sticks, compact flash cards, magnetic tapes of all kinds, computer chips (including, but not limited to, EPROM, PROM, RAM and ROM), and any other type of removable storage media.

G. "Active file" shall mean any electronic data file that is readily visible to the operating system and application with which it was created.

H. "Archival file" shall mean any electronic data file that is stored in electronic media for back-up purposes and is not otherwise an active file.

I. "Deleted file" shall mean any electronic data file that has been deleted from the electronic media on which it resides but has not yet been completely written over with new electronic data.

J. "File fragment" shall mean any electronic data file that exists as a subset of an original active file. A file fragment may be part of an active file, archival file or deleted file.

K. "You" or "Liquidator" shall mean Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, as Liquidator of Home, and his predecessors, successors, assigns, employees, agents, accountants, attorneys and any other persons acting or purporting to act on his behalf, including, but not limited to, the Special Deputy Liquidator.



L. "Liquidation" shall mean the liquidation of Home, which was commenced by the filing of a petition to liquidate on or about May 8, 2003.

M. "Motion" shall mean the Liquidator's Motion for Approval of Agreement and Compromise with AFIA Cedents filed in the Liquidation on or about February 11, 2004.

N. "Home UK Branch" shall mean Home's unincorporated branch operation in the United Kingdom.

O. "INA Agreement" shall mean the Insurance and Reinsurance Assumption Agreement, dated January 31, 1984, which is referred to in paragraph 3 of the Motion.

P. "Agreement" shall mean the Agreement with the AFIA Cedents that is the subject of the Motion.

Q. "UK scheme of arrangement" shall mean the proposed scheme of arrangement referred to in paragraphs 12 through 17 of the Motion.

R. "AFIA" shall mean the American Foreign Insurance Association, an unincorporated association of American insurers, through which the Home UK Branch wrote insurance and reinsurance business in the United Kingdom.

S. "AFIA Cedents" shall mean those insurers who ceded insurance risk to Home through the Home UK Branch.

T. "AFIA Treaties" shall mean those reinsurance treaties through which certain insurers ceded insurance risk to Home through the Home UK Branch.

U. "Bengelsdorf" or "Special Deputy Liquidator" shall mean Peter A. Bengelsdorf, as Special Deputy Liquidator of Home, and his predecessors, successors, assigns, employees, agents, accountants, attorneys and any other persons acting or purporting to act on his behalf.

V. "English provisional liquidation proceeding" or "English proceeding" shall mean the provisional liquidation proceeding for the Home UK Branch referred to on page 1 and paragraphs 5 and 8 of the Motion.

W. "Joint Provisional Liquidators" shall mean the Joint Provisional Liquidators appointed by the High Court of Justice in London, on or about May 8, 2003, in the English provisional liquidation proceeding for the Home UK Branch.

X. "Informal Creditors' Committee" or "Committee" shall mean the committee of certain AFLA Cedents, which is described in paragraph 8 of the Motion.

Y. The terms "all" and "each" shall be construed as all and each.

Z. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the requests below all responses that might otherwise be construed to be outside of its scope.

AA. The use of the singular form of any word includes the plural and vice versa.

### **Instructions**

A. These requests call for the production of all responsive documents in your possession, custody or control or available to you, your employees, attorneys, accountants, auditors or other persons acting on your behalf, in your employment, under your direction and/or control of your agents or representatives.

B. When information with respect to a corporation, partnership, limited liability company or unincorporated association or entity is called for in these requests, such reference shall be construed to include information with respect to that entity and any and all predecessors and successors in interest, parents, subsidiaries, affiliates, divisions or departments, agents,

representatives, directors, officers, employees, committees, attorneys, accountants and all other persons or entities acting on its behalf or under its control.

C. Where a document is not produced because of a claim of privilege, the following information shall be provided: (i) the type of document; (ii) the general subject matter of the document; (iii) the date of the document; and (iv) such other information as is sufficient to identify the document, including, where appropriate, the author of the document, the addressees of the document, any other recipients of the document, and, where not apparent, the relationship of the author, addressees, and recipients to each other.

D. If a document that is responsive to a document request was, but is not now, in your custody or control, provide a statement with the following information:

1. whether the document is still in existence, and if so, the name and business address of each person in whose custody a copy of the document may be found;
2. whether the document has been lost or destroyed, and if destroyed, why and by whom;
3. whether the document has been otherwise disposed of, stating who disposed of it, and the date and manner of disposition; and
4. a description of the contents of the document, the names of the author(s) and addressee(s) of the document, and the date the document was created.

E. If it is otherwise not possible to produce any document called for by the request, or if any part of the request is objected to, the reasons for the objection and/or other failure to produce should be stated with specificity as to all grounds.

F. The request is a continuing one and requires further and supplemental production as and whenever additional documents are acquired or made or located between the time of the initial production hereunder and the time this matter is concluded.

### Document Requests

1. All documents concerning the appointment of the Joint Provisional Liquidators by the High Court of Justice, as described in paragraph 5 of the Motion.

2. All documents filed in the English provisional liquidation proceeding for the Home UK Branch, including the application and any supporting legal submissions, witness statements, or affidavits.

3. All documents concerning the Agreement, including, but not limited to, all drafts of the proposed Agreement, all notes, memoranda or other documents relating to the Agreement, and all documents relating to any communications (written or oral) with respect to the Agreement.

4. All documents concerning the alleged “changes to the pre-liquidation arrangements” and the “disputes and uncertainty” created “over the filing, handling and payment of AFLA Cedents’ claims and payment of amounts under the INA Agreement” that are referred to in paragraph 7 of the Motion.

5. All documents concerning the allegation in paragraph 7 of the Motion that “certain of the AFLA Cedents have been exploring alternative means of realizing recovery with respect to the business protected by the AFLA Treaties, including possible circumvention of Home by entering into side arrangements with ACE Group.”

6. All documents concerning the allegation in paragraph 7 of the Motion that “[c]ertain AFLA Cedents have also questioned the application of the New Hampshire claims and distribution procedures to claims and assets located in the United Kingdom.”

7. All documents concerning the alleged suggestion by the AFLA Cedents that “UK assets arguably should be ‘walled off’ from United States creditors and distributed to Home UK Branch creditors” (Motion at ¶ 7), including, but not limited to, any “presentations” or other

documents regarding the "walling off" approach referred to in paragraph 7 of the Motion and any other communications (written or oral) between the AFIA Cedents and the Liquidator and/or the Joint Provisional Liquidators (or anyone else) regarding the "walling off" approach.

8. All documents concerning the negotiations between the Joint Provisional Liquidators and the Informal Creditors' Committee referred to in paragraphs 8 and 9 of the Motion.

9. All documents concerning the decision of "one of the members of the Committee" to abstain from the Agreement, as described in paragraph 9 of the Motion, including, but not limited to, all documents relating to any communications (written or oral) between the member of the Committee and the Liquidator and/or Joint Provisional Liquidators (or anyone else) regarding said decision.

10. All documents concerning the UK scheme of arrangement referred to in paragraphs 12 through 17 of the Motion, including, but not limited to, all documents concerning any communications (written or oral) between any of the AFIA Cedents and the Liquidator and/or Joint Provisional Liquidators (or anyone else) relating to the UK scheme of arrangement.

11. All documents concerning Sections 1.2, 1.9.1, and 1.9.7 of the Agreement, including, but not limited to, any analysis and supporting documentation for the distribution percentages of proceeds and net recoveries referred to in paragraph 14 of the Motion.

12. All documents concerning the allegation in paragraph 14 of the Motion that "the Net Recoveries payable to the AFIA Cedents and the net amounts paid to Home are each estimated to be in excess of \$50 million."

13. All documents concerning the allegation in paragraph 21 of the Motion that "it is appropriate to agree that the AFIA Cedents may receive a portion of the net proceeds" because it

"is in essence a cost of obtaining and collecting an asset of the Home estate for the benefit of the policyholders and other creditors of Home," including, but not limited to, all documents concerning any communications (written or oral) with respect to such allegation.

14. All working files, correspondence files, desk files, personal files or e-mails of any of the following persons concerning the subject matter of the above requests:

Roger A. Seigny  
Peter A. Bengelsdorf  
Gareth H. Hughes  
Maggie Mills  
Jonathan Rosen

15. A recent, updated copy of Peter A. Bengelsdorf's resume, curriculum vitae, or any other document providing Mr. Bengelsdorf's education and professional background and experience.

16. All documents concerning the Liquidator's media plan for providing notice of the existence of the liquidation and claim filing deadline.

Dated: March 19, 2004

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